1946.

File No. O Endowments / 46

A **BRANCH**

Subject:— Opinions under the Charitable Endowments Act, 1890.

(P 8 / E)

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Gen. 194 e.

417 - A

C O N T E N T S.

Legal Department File No. O. Endowments/46

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			Charitable Endowments Act, 1990.	
1. 7879 12.9.46			G.R.R.D. No. 2667/45 d.6th Sept. 1946 Religions and charitable endowments - Shri Nageshwar Deosthan at Sholapur.	1--2-
2. 8130 20.9.46			R -- Endowment - Lady Clarke Memorial Fund for Sick Children.	3-6
3.		334-p-Confl 20.8.1946	R - A note on the legal position of religions and charitable trusts in the Province of Bombay and elsewhere.	7-20
4. 2796-Confl 11.10.1946		256-Confl 22.10.1946	Donation of Rs. 5 lacs made by Dr.S.S.Ghandy to Govt. - Form of agreement between Govt. and Dr. Ghandhy.	21-24
5. 11358 13.12.46			R- Religions and charitable Trusts- properties belonging to the temple of Pashupati Mahadev and Vir Hanumanji and Sania (Hemad) taluka, Chorasi, Distt. Surat.	25-28

NKS 13/7

PHK 13/7

Charitable

Religious and Charitable endowments

Shree Nagareshwar Deosthan at Sholapur.

GOVERNMENT OF BOMBAY,
Revenue Department,
Resulution No. 2667/45
Bombay Castle, 6th September 1946.

Letter from the Collector of Sholapur, No.L.A.W. 103, dated 3rd July 1946.

Endorsement from the Commissioner. C.D. No.L.A.W.. 327 dated 9th July 1946.

Resolution:- In exercise of the powers conferred by section 93 of the Civil Procedure Code, 1908, the Government of Bombay is pleased to sanction the exercise by the Collector of Sholapur of the powers conferred by section 92 of the Said Code, on the Advocate General in respect of the institution of the suit by Messrs. Narasappa Hanmayya Kompal and Dattatraya Ramachandra Patterwar of Sholapur relating to the funds and properties of the Shree Nagareshwar Temple at Sholapur.

By order of the Governor of Bombay,

J.B. Bowman,

Deputy Secretary to the Government of Bombay,
Revenue Department.

Copies forwarded to :-

The Commissoner, C.D.,
The Collector of Sholapur(with case papers),
The District Sub-Registrar, Sholapur,
The Remembrancer of Legal Affairs,
The Legal Department

No.5191/17497-B,
General Department,
Bombay Castle, 16th September1946.

From

The Junior Assistant Secretary to the Government --
of Bombay, General Department,

To.

The Honorary Secretary and Treasurer,
Lady Clerke Memorial Fund for Sick Children.

Subject:- Endowment.

Lady Clerke Memorial Fund for Sick Children.

Sir,

With reference to your letter dated the 6th August 1946, on the subject mentioned above, I am directed to state that Government is pleased to sanction the acceptance by the Treasurer of Charitable Endowments, from the Lady Clerke Memorial Fund for Sick Children, of the sum in cash recuired to bring the universtable amount to Rs.2,000/- to enable him to purchase 3% loan of 1970/75 of the face value of Rs,2,000/-

Your obedient servant,

Sd/- B.J. Joshi,

Junior Assistant Secretary to the Government--
of Bombay, General Dopartment.

No.5191/17497-B,
General Department,
Bombay Castle, 16th September 1946.

Copy with a copy of the letter to which it is a reply forwarded for information to --

the Surgeon General with the Government of Bombay,
the Accountant General, Bombay,
the Remembrancer of Legal Affairs,
the Finance Department.

By order of the Governor of Bombay,

Sd/- B.J.Joshi.

Jonior Assistant Secretary to the Government --
of Bombay, General Department.

M.R.D.
11-7-56
C.4

Copy of letter dated the 6th August 1946 from the Honomary Secretary and Treasurer, Lady Clerke Memorial Fund for Sick Children.

Re: (a) Lady Clarke Memorial Fund.
Re: (b) Reinvestment of proceeds of 3% Defence Bonds 1946 face value Rs.2,000/-

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The Treasurer of Charitable Endowments writes in his letter No.TCE-92 of 18-7-46, that Government in their letter No.5191/ Copy B of 13-7-46 have ordered that the amount to be realised from 3% Defence Bonds of 1946 for Rs.2,000/- belonging to the Lady Clarke Memorial Fund should be reinvested in 3% Loan 1970/75. He further states that the amount of Rs,2,000/- will be reinvested in that loan, that is,1970/75 and the uninvestable cash will be returned to the Lady Clkarke Memorial Fund, and that if the Committee of the Lady Clarke Momorial Fund desire to purchase 3% Loan of 1970/75 of the face value of Rs.2,000/- by paying the additional amount required for the purchase sanction of Government is necessary which may please be obtained and communicated to his office.

2. As the investments of the Fund, as far as possible, are kept in even amounts it is requested that necessary permission mayplease be granted to the Treasurer of Charitable Endowments to invest the proceeds of 3% Defence Bonds 1946 in 3% Loan of 1970/75 of the face value of Rs.2,000/- by receiving from the Committee of the Lady Clerke Memorial Fund the required sum in cash to make up the cost of even amount of Rs,2,000/- Loan.

M.R.D.
11-7-56
C.4

Submitted with reference to the P.M.'s minute7 dated 22-4-1946 at p. 1 ante.

2. (a) The Mussalman Wakf Act, 1923(XLII) of 1923) for the better management of Wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties, applies to the Province of Bombay with effect from 1-6-1925 (vide p. 664 of unrepealed Central Acts, Vol,VII). This Act has been amended in its application to the Province of Bombay, by the Mussalman Wakf(Bombay Amendment) Act, 1935(Bom.XVIII of 1935) at p.211-224 of Bombay Code Vol.VI) and the Mussalman Wakf (Bombay Amendment) Act, 1925 (Bom.XV of 1945) - copy put up slipped E.

(b) The Parsi Public Trusts Registration Act, 1936(Bom.XXIII of 1936) for the registration, publication and inspection of Trusts created or existing for a public purpose for the benefit of Parsis and of certain trusts created by Parsis, and for the keeping, auditing, filing, inspection and publication of accounts in respect thereof, at pages 295-307 of Bombay Code Vol. VI extends to the whole of the Province of Bombay and has come into force with effect from 8-12-1937. This Act applies in the manner laid down under section 2.

Accordingly, the view expressed by the P.M. at p. 1 that the Parsee Panchayat and the Anjuman -i- Islam have made successful attempts to consolidate and co-ordinate charities with which they are concerned, is correct(vide Acts referred to above).

3. The Bombay Public Trusts Registration Act, 1935(Bom.XXV of 1935) at pages 229-240 of Bombay Code Vol. VI, for the registration of trusts created or existing for a public propose of a religious or

P.T.O.

charitable nature and for the audit and filing of accounts of such trusts with a view to ensuring the better management thereof, extends to the whole of the Province of Bombay. It has come into force with effect from 8-12-1937. Under sub-section(1) of section 2 of this Act, it applies to public trusts created or existing solely for the benefit of the Hindu Community or any section of such community and, having an annual gross income of not less than Rs.1,000. However, under sub-section (2)of section 2 of the Act, the Provincial Government, on a motion of either or both of the Chambers of the Privincial Legislature or otherwise, may, after previous publication by notification in the official Gazette, direct that all or any of the provisions of this Act, shall apply to any other public trust or class of public trust.

4. In order to prevent wasteful litigation arising out of maladministration and for the purpose of co-ordination, it is thus open to the Provincial Government of Bombay under sub-section(2)of section 2 to apply the provisions of Bom.XXV of 1935 to any other public turst or class of public trusts, other than those governed by the Mussalman Wakf Act, 1925 or the Parsi Public Trusts Registration Act, 1936. No new legislation is required for that purpose.

5. As regards Acts made by other provinces, attention is invited to para. 2. of R.L.A.'s note dated 25-4-1946(P. 2 ante).

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11-7-56
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Legal Department.

As desired a note on the legal position of religious and charitable trusts in the province of Bombay and elsewhere is attached herewith. The books and relevant authorities will be supplied when required.

Sd/-
9-4-46

H.M. (L)

H.P.M.

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Dr. Ghandhy proposes to have the shares sold on Government account presumably because he may have other dealings in shares and stocks. The sale by him of these shares may quite conceivably amount to carrying on or carrying out of business and the enhanced value obtained from the realisation of these shares may, therefore, be assessable to income tax-

Dr.Ghandhy's proposal to execute an agreement on the lines suggested by him does not appear to be sound- Such an agreement, in the first place, may not be enforceable at law as a mere promise to give in charity is nudum pactum and cannot be enforced and in the second place there may be administrative difficulties regarding the deposit of the moneys or secuities belonging to the Government(though conditionally) with a private Bank.

The better course appears to be that Dr. Ghandhy should hand over to Government the share- certificates with a number of blank transfer formss duly signed by him and attested to be held by Government subject to following conditions:-

(i)To sell the Shares and toxinvest the sale-proceeds in securities authorised by the Indian Trusts Act, 1882;

(ii)To utilise the said securities or the proceeds or any part thereof along with the accretions thereto for the purposes of a Scheme to be approved of by Dr. Ghandhy for starting an educational institution to be named after the late father of Dr.Ghandhy. Such Scheme to be settled and agreed upon between the Government and Dr.Ghandhy within a specified time; and

(i)in the event of no such scheme being settled and/or agreed upon between the Government and Dr. Ghandhy within the time so specified as aforessid, to deliver the same scurities and accretions to

the Trustees of Parsee Panchayat, Bombay, for being utilised by them for such charitiable purpose as they in their absolute discetion think proper.

On receipt from Dr.Ghandhy of the share-certificates and blank transfer forms with an offer containing the above terms, Government may pass a Government Resolution incorporating the above terms. Such Government Resolution will constitute a declaration of Trust by the Government and as such will be exempt from the payment of stamp duty.

Sd/-
21-10-46

Remembrancer of Legal Affairs.

U.R. to E&D. No.258-confl dated the 22nd October 1946.

M.R.D.
11-7-56
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